

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KENNETH N. ANDREWS

Claimant

VS.

BLACKBURN, INC.

Respondent

AND

INSURANCE COMPANY OF NORTH AMERICA

Insurance Carrier

Docket No. 158,135

ORDER

ON the 25th day of January, 1994, the application of the respondent for review by the Workers Compensation Appeals Board of an Order by Administrative Law Judge John D. Clark dated December 16, 1993, came on for oral argument by telephone conference.

APPEARANCES

The claimant appeared by and through his attorney, Robert L. Nicklin, of Wichita, Kansas. The respondent and its insurance carrier appeared by and through their attorney, Douglas C. Hobbs, of Wichita, Kansas. There were no other appearances.

RECORD

The record considered for the purposes of this appeal included the transcript of the December 16, 1993 hearing on claimant's motion for additional medical care and Exhibit No. 1 attached thereto, as well as pleadings filed of record and the Award and Orders previously entered in this case.

ISSUES

Respondent contends that the Administrative Law Judge has exceeded his jurisdiction by entering the Order of December 16, 1993, which continues the authorization of Dr. Klafta as a treating physician, including any referrals by Dr. Klafta.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(1) The Administrative Law Judge did not exceed his jurisdiction by his Order of December 16, 1993, continuing the authorization of treatment by Dr. Klafta, including referrals by Dr. Klafta.

This appeal involves a post-Award motion made by filing an E-3 form, for additional medical treatment. An Award was entered in this case on September 21, 1992. While the

original claim was being litigated, claimant became dissatisfied with the treating physicians and, following a preliminary hearing, the Administrative Law Judge ordered on October 29, 1991, that Dr. Klafta be an authorized treating physician. The Award of September 21, 1992 provides that future medical is awarded only upon proper application to the Director. Claimant's motion for such additional future medical treatment was held on December 16, 1993. At that time claimant introduced evidence that Dr. Klafta had referred claimant to the Barrow Neurological Institute for additional medical care. At the hearing on the motion claimant also testified to continuing and disabling pain.

The first issue to be determined by the Appeals Board is whether the Order by the Administrative Law Judge should be treated as an Order from a preliminary hearing or as a final Order. All final Orders are subject to de novo review by the Appeals Board. Orders from preliminary hearings are reviewed only to determine whether the Administrative Law Judge has exceeded his or her jurisdiction. In appeals from Preliminary Orders, the Appeals Board reviews de novo on the record only jurisdictional findings.

The order appealed in this case is similar in nature to a Preliminary Order. Preliminary hearing procedures were followed. The matter came on for hearing pursuant to an application for preliminary hearing. Medical records were introduced without deposition as would be appropriate only in a preliminary hearing. The order also relates to a matter of ongoing concern. The future course of the medical treatment is not now determined. At its conclusion, a final order may be entered and appealed, if necessary. The Appeals Board does, therefore, treat this as an appeal from a Preliminary Order for purposes of determining the nature of the review to be undertaken by the Appeals Board.

As previously indicated on appeals from Preliminary Orders, the Appeals Board's review is limited to the determination of whether the Administrative Law Judge has exceeded his or her jurisdiction. See K.S.A. 44-551. Certain findings specified in K.S.A. 44-534a are to be considered jurisdictional findings. The findings here appealed are not among those specifically listed and the Appeals Board finds that the Order of the Administrative Law Judge of December 16, 1993 did not exceed the Administrative Law Judge's jurisdiction. Accordingly the Order is not subject to review and remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of March, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Robert L. Nicklin, P.O. Box 1680, Wichita, Kansas 67201
Douglas C. Hobbs, 600 Epic Center, 301 N Main, Wichita, Kansas 67202
John D. Clark, Administrative Law Judge
George Gomez, Director